

In re) Fair Hearing No. 11,706
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare to recoup an overpayment of ANFC benefits to the petitioner (totaling \$755.00) by reducing her ongoing ANFC benefits by ten percent. The issue is whether the petitioner has demonstrated sufficient "hardship" to require the Department to recoup the overpayment at a lower rate.

On July 17, 1992, the Human Services Board affirmed the decision of the Department to terminate the petitioner's ANFC benefits because of the petitioner's receipt some months earlier of lump sum income. Fair Hearing No. 11,250. In that case, the petitioner received continuing ANFC benefits totaling \$755.00 during the pendency of her appeal. The petitioner does not dispute that this amount must now be considered an "overpayment" subject to recoupment. See W.A.M. 2234.2, infra.

The issue in this case is the rate of recoupment. As a result of a ruling by the Vermont Supreme Court in Burbo v. D.S.W., Docket No. 90-569 (June term, 1991), the Department was obligated to consider the "hardship" of an ANFC household

facing a recoupment of benefits.¹ The petitioner submitted written and oral statements as to her income and expenses. Her representations in this regard are not controverted by the Department.

The petitioner's household consists of the petitioner, her husband, and their three children. The petitioner receives SSI in the amount of \$432.00 a month. Her husband and the three children get ANFC benefits of \$740.00 a month. This gives a total of \$1,172.00 a month.

The petitioner represents that her household expenses for rent, utilities, phone, food (over and above food stamps), car expenses, clothing, medications (non-Medicaid covered), and personal items total, at most, \$1,080.00 a month. Despite prodding by the Department and the hearing officer, the petitioner could neither think of any more expenses nor account for how the remainder of her income is spent each month.

¹The regulation (W.A.M. § 2234.2) in effect at that time specified that ANFC overpayments were to be recouped in an amount such that the household would "retain no less than ninety percent" of its income. The Court, in reversing a decision by the Board (Fair Hearing No. 9544) interpreted this section to mean that the Department must recoup at a rate less than ten percent of income in cases where "hardship" is shown. Effective February 1, 1993, however, the Department amended W.A.M. § 2234.2 to provide that in all such cases recoupment will be at a flat ten percent--regardless of any alleged hardship. In this case, the Department concedes that the petitioner is at least entitled to a consideration of hardship because she received her notice of overpayment within the time "window" between the Court's decision in Burbo and the recent amendment to the regulations.

The petitioner proposes to recoup the overpayment by reducing the petitioner's ANFC by \$74.00 per month until the \$755.00 is recovered. This would leave the petitioner with \$1,098.00 per month of total income. Based on the petitioner's claimed expenses it cannot be concluded that this would pose an undue hardship on the petitioner sufficient to require the Department to recoup at a lower monthly amount.

ORDER

The Department's decision is affirmed.

REASONS

After the Supreme Court's decision in Burbo the Department did not issue any written regulations or guidelines to determine "hardship" in ANFC overpayment cases. Its policy appears to have been to simply compare a household's claimed monthly expenses with the amount of income that would remain after recoupment. The petitioner does not maintain that this method is anything but logical and fair.

In the petitioner's case, however, even with the proposed recoupment of \$74.00 (ten percent of her monthly ANFC grant), by the petitioner's own calculations she would have more than enough monthly income to meet all her household expenses. This result is consistent with both the regulations and the Burbo decision. Therefore, the Department's decision is affirmed.

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